

1 AMENDMENT TO HOUSE BILL 2228

2 AMENDMENT NO. _____. Amend House Bill 2228 as follows:
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Criminal Code of 1961 is amended by
6 changing Section 33-5 as follows:

7 (720 ILCS 5/33-5)

8 Sec. 33-5. Preservation of evidence Chain-of-custody.

9 (a) It is unlawful for a law enforcement agency or an
10 agent acting on behalf of the law enforcement agency State's
11 Attorney, an Assistant State's Attorney, or other employee of
12 the Office of the State's Attorney or for a peace officer or
13 other employee of a law enforcement agency to intentionally
14 fail to comply with the provisions of subsection (a) of
15 Section 116-4 of the Code of Criminal Procedure of 1963.

16 (b) Sentence. A person who violates this Section is
17 guilty of a Class 4 felony.

18 (c) For purposes of this Section, "law enforcement
19 agency" has the meaning ascribed to it in subsection (e) of
20 Section 116-4 ~~clause (a)(4) of Section 107-4~~ of the Code of
21 Criminal Procedure of 1963.

22 (Source: P.A. 91-871, eff. 1-1-01.)

1 Section 10. The Code of Criminal Procedure of 1963 is
2 amended by changing Section 116-4 as follows:

3 (725 ILCS 5/116-4)

4 Sec. 116-4. Preservation of evidence for forensic testing
5 Chain-of-custody.

6 (a) Before or after the trial in a prosecution for a
7 violation of Section 12-13, 12-14, 12-14.1, 12-15, or 12-16
8 of the Criminal Code of 1961 or in a prosecution for an
9 offense defined in Article 9 of that Code, or an attempt in
10 violation of Section 8-4 of that Code of any of the
11 above-enumerated offenses, unless otherwise provided herein
12 under subsection (b) or (c), a law enforcement agency or an
13 agent acting on behalf of the law enforcement agency the law
14 enforcement--agency--and--the-State's-Attorney's-Office shall
15 preserve, subject-to--a--continuous--chain--of--custody, any
16 physical evidence in their possession or control that is
17 reasonably likely to contain forensic evidence, including,
18 but not limited to, fingerprints or biological material
19 secured in relation to a trial and with sufficient official
20 documentation to locate that evidence.

21 (b) After a ~~trial-resulting-in-a~~ judgment of conviction
22 is entered, the evidence shall either be impounded with the
23 Clerk of the Circuit Court or shall be securely retained by a
24 law enforcement agency. Retention shall be permanent in cases
25 where a sentence of death is imposed. Retention shall be
26 until the completion of the sentence, including the period
27 of mandatory supervised release for the offense, or January
28 1, 2006, whichever is later, for any conviction for an
29 offense or an attempt of an offense defined in Article 9 of
30 the Criminal Code of 1961 or in Section 12-13, 12-14,
31 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or for:

32 (1) ~~Permanent--following--any--conviction--for--an~~
33 ~~offense-defined-in-Article-9-of-the--Criminal---Code--of~~

1 1961.

2 (2) -- For 25 years following any conviction for a
3 violation of Section 12-13, 12-14, 12-14.1, 12-15, or
4 12-16 of the Criminal Code of 1961.

5 (3) -- For 7 years following any conviction for any
6 other felony for which the defendant's genetic profile
7 may be taken by a law enforcement agency and submitted
8 for comparison in a forensic DNA database for unsolved
9 offenses.

10 (c) After a judgment of conviction is entered, the
11 State's Attorney or law enforcement agency required to retain
12 having custody of evidence described in subsection (a) may
13 petition the court with notice to the defendant or, in cases
14 where the defendant has died, his estate, his attorney of
15 record, or an attorney appointed for that purpose by the
16 court for entry of an order allowing it to dispose of
17 evidence if, after a hearing, the court determines by a
18 preponderance of the evidence that:

19 (1) it has no significant value for forensic
20 science analysis and should ~~must~~ be returned to its
21 rightful owner, destroyed, used for training purposes, or
22 as otherwise provided by law; or

23 (2) it has no significant value for forensic
24 science analysis and is of a size, bulk, or physical
25 character not usually retained by the law enforcement
26 agency and cannot practicably be retained by the law
27 enforcement agency; or-

28 (3) there no longer exists a reasonable basis to
29 require the preservation of the evidence because of the
30 death of the defendant; however, this paragraph (3) does
31 not apply if a sentence of death was imposed.

32 (d) The court may order the disposition of the evidence
33 if the defendant is allowed the opportunity to take
34 reasonable measures to remove or preserve portions of the

1 evidence in question for future testing.

2 (d-5) Any order allowing the disposition of evidence
3 pursuant to subsection (c) or (d) shall be a final and
4 appealable order. No evidence shall be disposed of until 30
5 days after the order is entered, and if a notice of appeal is
6 filed, no evidence shall be disposed of until the mandate has
7 been received by the circuit court from the appellate court.

8 (d-10) All records documenting the possession, control,
9 storage, and destruction of evidence and all police reports,
10 evidence control or inventory records, and other reports
11 cited in this Section, including computer records, must be
12 retained for as long as the evidence exists and may not be
13 disposed of without the approval of the Local Records
14 Commission.

15 (e) In for--purposes--of this Section, "law enforcement
16 agency" includes any of the following or an agent acting on
17 behalf of any of the following: a municipal police
18 department, county sheriff's office, any prosecuting
19 authority, the Department of State Police, or any other
20 State, university, county, federal, or municipal police unit
21 or police force.

22 "Biological material" includes, but is not limited to,
23 any blood, hair, saliva, or semen from which genetic marker
24 groupings may be obtained. has-the-meaning-ascribed-to-it--in
25 elause-(a)(4)-of-Section-107-4-of-this-Code-

26 (Source: P.A. 91-871, eff. 1-1-01.)

27 Section 99. Effective date. This Act takes effect upon
28 becoming law."